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Laborers International Union of North America, Local Union 578 (Shaw Stone and Webster Construction, Inc.) and Sebedeo Lopez. Case 27–CB–4935

July 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On March 21, 2008, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, Laborers International Union of North America, Local Union 578, Pueblo, Colorado, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Shaw Stone and Webster Construction, Inc. to terminate the employment of Sebedeo Lopez, or any other employees, for failing to pay union dues and fees pursuant to a union-security clause without first advising them of the amount of the dues delinquency (showing the calculation), and afford-

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No party excepted to the judge’s dismissal of the allegation that the Respondent violated Sec. 8(b)(2) by attempting to cause the Employer, Shaw Stone and Webster Construction, to discharge employee Sebedeo Lopez by means of the November 1, 2006 letter.

² We shall substitute the Board’s standard language for certain provisions of the judge’s recommended Order and notice.

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

ing them a reasonable opportunity to pay the amount owed.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, notify Shaw Stone and Webster Construction, Inc. and Sebedeo Lopez, in writing, that it withdraws and rescinds its request for Lopez’ discharge, and that it has no objection to his reinstatement without any loss of seniority or other rights and privileges previously enjoyed by him.

(b) Make Sebedeo Lopez whole for any loss of pay and other benefits resulting from his discharge, with backpay to be computed in a manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files, and ask Shaw Stone and Webster Construction, Inc. to remove from its files, any reference to the unlawful discharge of Sebedeo Lopez. Within 3 days thereafter, notify Sebedeo Lopez in writing that it has done so and that it will not use the unlawful discharge against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return to the Regional Director sufficient copies of the notice for posting by Shaw Stone and Web-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

ster Construction, Inc., if willing, at all places where notices to employees are customarily posted.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT cause or attempt to cause Shaw Stone and Webster Construction, Inc. to terminate the employment of Sebedeo Lopez, or any other employee, for failing to pay union dues and fees pursuant to a union-security clause without first advising them of the amount of the dues delinquency (showing the calculation), and affording them a reasonable opportunity to pay the amount owed.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, notify Shaw Stone and Webster Construction, Inc. and Sebedeo Lopez, in writing, that we withdraw and rescind our request for Lopez' discharge, and that we have no objection to his reinstatement without any loss of senior-

ity or other rights and privileges previously enjoyed by him.

WE WILL make Sebedeo Lopez whole for any loss of pay and other benefits resulting from his discharge, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files, and ask Shaw Stone and Webster Construction, Inc. to remove from its files, any reference to the unlawful discharge of Sebedeo Lopez and WE WILL, within 3 days thereafter, notify him in writing that we have done so and that we will not use the unlawful discharge against him in any way.

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 578

Renée C. Barker, Esq. for the General Counsel.

Terrance A. Johnson, Esq., of Colorado Springs, Colorado, for the Respondent.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. This case was tried in Colorado Springs, Colorado, on January 22, 2008, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 27 of the National Labor Relations Board (the Board) on May 31, 2007. The complaint is based on a charge 27-CB-4935 filed by Mr. Sebedeo Lopez, an individual (the Charging Party), against Laborers International Union of North America, Local Union 578 (the Respondent or the Union) on March 28, 2007.

The complaint, as amended at the hearing, alleges, and the answer as amended at the hearing denies, inter alia, that the Respondent in November 2006 demanded and on November 14, 2006, wrongfully caused Shaw Stone and Webster Construction, Inc. (the Employer) to discharge its Pueblo, Colorado based employee, Mr. Sebedeo Lopez, in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

FINDINGS OF FACT

On the entire record herein, including helpful briefs from the Respondent and the General Counsel, I make the following findings of fact.¹

I. JURISDICTION

At all material times, Shaw Stone and Webster Construction, Inc. has been a corporation with an office and place of business in Stoughton, Massachusetts, engaged in the construction of a coal-fired power plant in Pueblo, Colorado (the Pueblo, Colorado jobsite). During the 12 months preceding the date of issuance of the complaint, the Employer, in the course and conduct of its work on the Pueblo, Colorado jobsite, purchased and

¹ As a result of the pleadings, as amended, and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

received at the Pueblo, Colorado jobsite, goods valued in excess of \$ 50,000 directly from points outside the state of Colorado.

Based on the above, there is no dispute and I find the Employer is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The pleadings establish, there is no dispute, and I find the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union represents employees in Colorado. The Union's business manager since June 2007, business agent and field Representative in November 2006, and secretary/treasurer at all relevant times, was Mr. Eufrazio "Rudy" Ortiz. Its main office secretary/office manager, who was hired in June 2006, was Ms. Patricia Martinez. The Union's shop steward at relevant times at the Pueblo, Colorado jobsite was Mr. Dave Lucero. The Employer's Pueblo, Colorado jobsite general forman at relevant times was Mr. Randy Espinoza.

Since on or around March 3, 2006, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

All laborers, journeymen laborers and apprentice laborers working for the Employer at its construction project in Pueblo, Colorado.

At all material times since on or about March 3, 2006, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering the unit that incorporates or otherwise adopts the Colorado Statewide Laborers Heavy Highway Construction Agreement and contains the following provision, called the union-security provision:

All [the] Employer's employees shall, as a condition of employment with Employer, become members of [the] Respondent within eight (8) days of the date of the collective bargaining agreement and all employees hired after that date shall, as a condition of employment with [the] Employer, become members of [the] Respondent within eight (8) days of the commencement of their employment.

The Union has its main offices in Colorado Springs, Colorado, and a part-time office in Pueblo, Colorado. It has at all relevant times operated a dispatch hall in its main office providing unit employees to requesting signatory employers, including the Employer.

Mr. Sebedeo Lopez is a resident of Pueblo, Colorado, and has registered with the Union's hiring hall from time to time seeking employment. On June 9, 2005, as part of the registration process for the hiring hall, Mr. Lopez signed two documents provided by the Union: a general information sheet for construction members and a membership application. The

construction member information sheet stated in part [Emphasis in original].:

CONSTRUCTION MEMBER

INITIATION FEES

The initiation fee is \$344.00. \$44.00 is paid now for the registration fee to get on the out-of-work-list. \$300 is paid after employment, in installments of \$100.00 per week for 3 weeks. . . . All payments are your responsibility. . . .

QUARTERLY DUES

One month of dues is waived while payments are made for the initiation fees. Dues are usually paid in quarterly payments of \$87.00 (or \$29.00 per month) Suspension will occur in two months and one day. A \$25.00 penalty will be assessed to reinstate.

* * * *

CHANGE OF ADDRESS

You have to keep us informed of your current address and telephone number. This is for insurance purposes and benefits claims. This will be your responsibility.

The membership application provided designated spaces to enter the applicant's name and address as well as his or her signature. Mr. Lopez filled out, signed, and submitted his application on June 9, 2005, providing the same home address he entered on the March 28, 2007 charge in the instant case. The application in its printed portion stated in part:

[I] understand that if I am over two (2) months in arrears with the payment of my monthly membership dues I will be suspended on the first day of the third month without notice. Initiations not completed within 30 days are to be automatically cancelled and all monies forfeited.

Mr. Lopez testified that he signed the forms which were placed in evidence although he did not recall receiving copies of the forms. He also testified he had been given copies of the documents to sign other times he registered for dispatch without being given a copy of any document. Mr. Ortiz testified that at all relevant times the Union has had all nonmember hiring hall registrants fill out these two forms on each occasion of their registration on the out-of-work list.

Mr. Lopez received a dispatch from the union hiring hall to a Unit position at the Employer's Pueblo, Colorado jobsite. His dispatch slip is dated July 14, 2006, and bears his signature. The multicopy form has copies for the employee, the Employer, the Union, and the Trust Fund. The form states in part:

I understand that I have the right to be or remain a non-member of the union, but still must pay a regular fee to the District Council. I also understand that I have the right to object to paying for union activities that are not germane to the union's duties as bargaining agent and to obtain a reduction in fees, that I have the right to receive information to enable me to decide whether to object and to be informed of internal union procedures for filing objections.

There was no evidence offered nor argument made at the hearing or on brief that Mr. Lopez sought either to remain a non-member, sought a reduction in union dues or sought information relevant to dues reduction.

B. Events

As noted, Mr. Lopez was dispatched by the Union to the Employer's Pueblo, Colorado jobsite on July 14, 2006, to commence work as a unit employee on July 17, 2006. He started work at the Pueblo, Colorado jobsite on that date as a unit employee and continued his employment in the normal course without apparent incident into October 2006. During that period he had not contacted the Union about, nor submitted any payments to the Union towards, his union initiation fee or union membership dues obligation.

In early October 2006, the Union in reviewing its records discovered that Mr. Lopez had not made any payments on his union-security obligation. Mr. Ortiz testified that, consistent with the Union's regular practice of sending a letter to represented employees working under contracts with union-security clauses who were in arrears of their financial obligation to the Union, the Union sent the following letter to Mr. Lopez home at the address he had provided.

The letter stated:

October 12, 2006

Stone & Webster

Dear Madams/Sirs:

In accordance with our collective bargaining agreement as it pertains to Union Membership, we are requesting the dismissal of:

SEBEDO LOPEZ SS# [omitted for privacy purposes]

for failure to comply with the contract. In order to assure good standings it would require immediate payment to our office of:

\$120.00 (Late Dues)

\$ 25.00 (Reinstatement fees)

Mr. Lopez is currently not a member in the Laborers International Union.

Mr. Lopez will need a referral from our office to continue on the job or we can provide a laborer to replace this employee.

May we advise that as provided in our agreement, we are prepared to dispatch to your job a qualified replacement for the employee to be replaced at the end of the current workday.

Thank you in advance for your cooperation in this matter.

Sincerely yours,

Rudy Ortiz
Secretary/Treasurer
Laborers Local #578

Ms. Martinez testified that she prepared and printed the letter, as she did with other represented employees in similar circumstances, using a template resident in her computer which she customized as appropriate. She testified she then placed the letter in an envelope she hand addressed obtaining Mr. Lopez' address from the Unions records—all consistent with the Union's regular practice. She testified that she franked the envelope and sent the letter by post only to Mr. Lopez' home and not to the Employer.

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The General Counsel however introduced a portion of Ms. Martinez' investigative affidavit which states in part:

At that time I called [the Employer], I had no idea that Sebedo Lopez was late on paying his dues. After I got the list I checked all the members and typed up letters and sent them out to plenty of Shaw employees who were late. I first faxed them to the company on or around October 12th. I spoke to Darlene at Shaw and she said she would disperse. I didn't send that batch of letters to the members at home, but my practice right now is to mail it to their home so they have the opportunity to make arrangements with Rudy.

Mr. Lopez testified he never received the letter. Ms. Martinez testified that the letter to Mr. Lopez was never returned by the USPS to the Union as undeliverable.

Mr. Ortiz testified that the Union notified the Employer's jobsite union steward, Dave Lucero, that the letter had been sent to Mr. Lopez and that "he needed to tell [Mr. Lopez] he needed to come in and pay dues." Mr. Lucero did not testify in the proceeding. Mr. Lopez denied any conversation with Mr. Lucero at that time concerning his union-security obligation.

When the Union noted in late October that Mr. Lopez had still not made any payments to the Union nor contacted them respecting union-security payments, the Union prepared another letter dated November 1, 2006. That letter was given by the Union to its job steward, Lucero, by Mr. Ortiz for service on Mr. Lopez.

Mr. Lopez testified that he was at work on November 1, 2006, when he met with Union Secretary Treasurer Rudy Ortiz and Job Steward Dave Lucero. Mr. Lucero gave Mr. Lopez a letter on union letterhead which stated [Emphasis in original.]:

November 1, 2006

Shaw Construction

Dear Madams/Sirs:

In accordance with our collective bargaining agreement as it pertains to Union Membership, we are requesting the dismissal of:

SEBEDO LOPEZ SS# [omitted]

for failure to comply with the contract. In order to assure good standings it would require immediate payment to our office of:

\$415 (Initiation Fee, and Dues)

Mr. Lopez is currently not a member in the Laborers International Union.

Mr. Lopez will need a referral from our office to continue on the job or we can provide a laborer to replace this employee right away.

May we advise that as provided in our agreement, we are prepared to dispatch to your job a qualified replacement for the employee to be replaced at the end of the current workday.

Thank you in advance for your cooperation in this matter.

Sincerely yours,
 Rudy Ortiz
 Secretary/Treasurer
 Laborers Local #578

The parties stipulated that a copy of the letter was also provided the Employer on the same date. The Union also asserted that a copy had been sent to Mr. Lopez' home.

Mr. Lopez testified respecting the substance of his conversation with the Union Steward Mr. Lucero:

Mr. Lucero advised me that I had to pay this money here and to go ahead and do it as soon as possible, and if we had any problems as far as the money, it was quite a bit of money, [\$]415, to call Patty [Martinez, the secretary at the Union offices in Pueblo, Colorado] and make arrangements.

During the conversation, Mr. Lopez testified that Mr. Ortiz did not say anything and Mr. Lucero said essentially nothing else. More specifically Mr. Lopez denied Lucero made any statements about the precise amount he owed, the dates he owed the money for, the method of computation of the amount due, the deadline to pay the money, or what would happen to him if he did not pay the money.

Mr. Ortiz did not testify to a person to person conversation with Mr. Lopez that day. Rather he testified that on that day he spoke with Mr. Lopez by telephone when Mr. Lopez called him at the Union's main office on Steward Dave Lucero's cell phone. Mr. Ortiz testified:

So you spoke with Mr. Lopez on Dave's cell phone?

A. Yes.

Q. Did he call you or did you call him?

A. Actually Dave [Lucero] called the hall.

Q. Okay. And then describe that conversation.

A. Okay. And that's when he explained to him, you know, you've already been—he was there since July, he hasn't paid anything. We told him the best we could do is probably 150 this week, 150 next week. If not, I'll have to have you removed. And he said that's fine and he never came in and paid anything.

Mr. Ortiz also testified to a slightly different version of events:

[Mr. Lopez] called in, I think it was either on Dave [Lucero]'s cell phone or [the Employer's General Foreman] Randy Espinoza's, and we told him—he says well he was going through some bad times, but we told him well what we can do is you pay 150 this week, 150 next week, and then if not then I'll have no choice but to have you removed from the job.

The General Counsel placed in evidence a portion of an affidavit provided by Mr. Ortiz during the course of the investigation of the charge in the instant case which asserted that he had neither talked to nor made an agreement with Mr. Lopez respecting a schedule for payment of his arrearages. Mr. Ortiz testified however, that his affidavit was in error and a post affidavit review of the events refreshed his memory of his conversation with Mr. Lopez.

Mr. Lopez denied that the described telephone conversation ever took place. He further testified however that he tele-

phoned Ms. Martinez from Pueblo sometime between November 1st and 5th and told her he had \$200 he was going to send her and that she said "OK" without there being any more said between them in the conversation. Mr. Lopez specifically denied that Ms. Martinez made any statements about the precise amount he owed, the dates he owed the money for, the method of computation of the amount due, the deadline to pay the money, or what would happen to him if he did not pay the money. Ms. Martinez did not testify respecting any conversations she had or did not have with Mr. Lopez.

Mr. Lopez testified he purchased a money order on Friday, November 10, 2006, with a face value of \$200. The nonnegotiable stub of the money order, dated November 10, 2006, was placed in evidence. He testified he worked at the jobsite for a half day on Monday, November 13, 2006, at which time, suffering from a cold, he left work and went to the emergency room in a local health care institution. While there he testified he called Ms. Martinez at the Union's main office. He testified:

I told her that I had a money order for \$200 and that once I went out of the emergency room I was going to go out to [Colorado] Springs to take it.

Q. Was anything else said during the conversation?

A. Yeah. At that point she told me that I didn't have to go all the way to Colorado Springs, that Rudy Ortiz was in the office there in Pueblo, that I could just run down there and take it to him, and that was the end of that part of the conversation.

Mr. Lopez again specifically denied that Ms. Martinez made any statements in this conversation about the precise amount he owed, the dates he owed the money for, the method of computation of the amount due, the deadline to pay the money, or what would happen to him if he did not pay the money. Ms. Martinez did not testify respecting her conversations with Mr. Lopez.

Mr. Lopez testified he left the hospital and went to the Union's Pueblo office in the early afternoon but found it locked and apparently unstaffed. He again called Ms. Martinez. He testified:

So at that point I called Patty again and asked her that Rudy wasn't there, and at that point she informed me to go ahead and fill out the money order and throw it in the slot in the door, which I did. I filled out the -- I asked her at that time that if I just signed it also on the back, and she said no but to go ahead put the initials N-I-N-I-P² on the front, and so I did, and I dropped it in the slot.

Q. Did you have any discussion on when you would pay the rest of the money?

A. Yeah. The discussion that we had made is that I had asked her to give it till Friday, [November 17, 2006] and she said no, I'm not going to give it till Friday, you've got to pay Thursday, [November 16, 2006]. So I did pay the remainder of the money on Thursday.

Mr. Lopez again specifically denied that Ms. Martinez made any statements in the telephone call about the precise amount he owed, the dates he owed the money for, the method of com-

² The money order stub in evidence bears the handwritten notation: INIP.

putation of the amount due, the deadline to pay the money, or what would happen to him if he did not pay the money.

Mr. Ortiz testified to his subsequent actions relevant to Mr. Lopez:

Q. Did you ever make an arrangement to meet Mr. Lopez at the Pueblo office?

A. On that Friday, I think it was the 10th [of November, 2006], he was supposed to go in. I was going to be there from three to five. He never showed up. I called Patty and told him (sic) he's not here. Come Monday again I called and I talked to Dave [Lucero] and Randy Espinoza. And I told Randy, you need to have him come in tonight. I'll be here from three to five. If he doesn't pay, I'm going hunting and I won't be here for the rest of the week. He has to come in and pay or he'll have to be walked off the job.

Q. So what—you waited at the Pueblo office on Monday. You got there at three o'clock?

A. Monday [November 13, 2006] I was there from actually I think I was there about 2:30, because I called Patty when I got there and I told her, okay I'm here already and I'll be here until five o'clock. Again, about five minutes till five, nobody showed up. I called her and I said hey he hasn't sent a payment. So I left. I came back about seven o'clock, because I had some computer stuff I had to do before I went on vacation, and just to make sure nothing was dropped in the mail slot or anything like that, and there was no mail, no nothing. So, and then I left about eight o'clock, so I was there about an hour.

Mr. Ortiz' described conversation with Steward Lucero and General Foreman Espinoza in which he directed them to "have [Lopez] come in tonight" was not addressed by either Mr. Lucero or Mr. Espinoza neither of whom testified. Mr. Lopez denied he spoke with either or both of them as described. Thus, there was no direct evidence that either or both did in fact have contact or a conversation with Mr. Lopez on that occasion.

On Tuesday, November 14, 2006, Mr. Ortiz telephoned the Employer's General Foreman Espinoza and instructed him to fire Mr. Lopez. Mr. Lopez went to work that same day but after a few hours on the job was called into the office. Mr. Lopez testified:

And Mr. Lucero and Mr. Espinoza were there. And Mr. Espinoza is the general foreman and he advised me at that point that he was going to have to walk me off the job because he had strict orders from Rudy Ortiz to walk me off the job and because of my union dues.

Mr. Lopez was terminated by the Employer that day, Tuesday, November 14, 2006.

Mr. Lopez testified that on Thursday, November 16, 2006, he paid the Union the remainder of his then arrears, i.e. \$215, which was the remainder of the total of the November 1, 2006 letter's designated sum of \$415, from which \$200 had been paid by Mr. Lopez as described in Mr. Lopez' version of events on Monday, November 13, 2006. Mr. Ortiz testified to Mr. Lopez' subsequent circumstances:

Q. Did—when was Mr. Lopez reinstated to go back to work, if ever, at Shaw, Stone and Webster?

A. Well, he—once he paid his initiation fee, which I'm not sure the date of that was.

Q. Just approximate is fine.

A. Probably—well, I was gone for a week, so probably the next week I'm thinking.

Q. So he went back to work?

A. He went back to work I think three weeks later after—

Mr. Lopez thereafter returned to work for the Employer in the Unit and as of the time of the hearing was both a Unit employee of the Employer and a member of the Union in good standing.

C. Analysis and Conclusions

1. The General Counsel's complaint

The essence of the General Counsel's unfair labor practice allegations are set forth in paragraphs 6³ through 8 of the complaint:

6.

(b) On or about November 1, 2006, Respondent, by letter to the Employer, demanded the termination of Sabedeo Lopez, an employee of the Employer.

(c) On or about November 14, 2006, Respondent, by its Business Agent Eufrazio Ortiz, demanded that the Employer terminate Sabedeo Lopez, an employee of the Employer.

(d) By the conduct described in paragraph 6(b), Respondent attempted to cause the Employer to terminate Sabedeo Lopez, an employee of the Employer.

(e) By the conduct described in paragraphs 6(b)-(c), Respondent caused the Employer to terminate employee Sabedeo Lopez, an employee of the Employer.

(f) By virtue of the relationship described in paragraph 5(a), Respondent owed Sabedeo Lopez, an employee of the Employer, a fiduciary duty in the enforcement of the Union-Security Provision described in paragraph 5(b).

(g) Respondent engaged in the conduct described in paragraphs 6(b)-(c) without providing Sabedeo Lopez, an employee of the Employer, with notice of the following:

- i. a statement of the precise amount and corresponding dates of his arrearage;
- ii. the method Respondent used to compute his arrearage;
- iii. a reasonable deadline for payment of his arrearage; and
- iv. the consequences of nonpayment of his arrearage.

(h) By the actions described in paragraphs 6(b) and 6(c), without providing the notice described in paragraph 6(g), Respondent breached the fiduciary duty described in paragraph 6(f).

7.

By the conduct described in [complaint] paragraphs 6(b)–(c), Respondent has been restraining and coercing

³ Complaint par. 6(a) and the references to that paragraph throughout the complaint were withdrawn by the General Counsel.

employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A)[⁴] of the Act.

8.

By the conduct described in paragraphs 6(b)—(c), Respondent has been attempting to cause and, by the conduct described in paragraph 6(c) did cause, an employer to discriminate against its employee in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2)[⁵] of the Act.

2. The 8(b)(1)(A) and 8(b)(2) allegations concerning the November 14, 2006 union demand of the Employer to discharge Mr. Lopez and his discharge

a. The basic law of a Union's duty to represented employees regarding union security

The law applicable to a Union's obligations to represented employees in the context of seeking or obtaining an employee's discharge for failure to meet union-security obligations are longstanding and not under challenge in the instant proceeding.

The Board's fountainhead case on the issue is *Hotel and Restaurant Employees, Local 568 (Philadelphia Sheraton Corp.)*, 136 NLRB 888 (1962), enf'd. 320 F.2d 254 (3rd Cir. 1963), holding that a union seeking to enforce a union-security provision against a represented employee has a fiduciary duty to deal fairly with the individual.

The Board held in *Teamsters Local 150 (Delta Lines)*, 242 NLRB 454, 454–455 (1979).

The General Counsel alleged that Respondent's conduct in securing [the employee]'s discharge violated Section 8(b)(1)(A) and Section 8(b)(2) of the Act because Respondent did not afford [the employee] a reasonable opportunity to comply with the contractual union-security provisions, and did not inform [the employee] of the amount he owed, the method used to compute the amount, and the manner in which he could satisfy his obligation before it sought his discharge.³

³ The Board has long held that these obligations must be satisfied before a discharge may be sought for failing to comply with the contractual union-security provisions of a collective-bargaining agreement. See *Teamsters Local Union No. 122*,

⁴ Sec. 8(b)(1)(A) of the Act states:

It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

⁵ Sec. 8(b)(2) of the Act states:

It shall be an unfair labor practice for a labor organization or its agents—(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; . . .

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (August A. Busch & Co of Mass., Inc.), 203 NLRB 1041 (1973).

And, in *Coopers NIU (Blue Grass)*, 299 NLRB 720, 723 (1990), the Board was more specific:

[W]hen a union seeks to enforce the union-security provision of a contract against unit employees, it has a fiduciary duty to fully inform the employee of his dues obligation before taking any action to effect his discharge. Specifically, the Union has to give the employee, at minimum, reasonable notice of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount, tell the employee when to make the required payment, and explain to the employee that failure to pay will result in discharge.

b. Narrowing the issues

There is no doubt that by November 2006, Mr. Lopez was obligated by the terms of a valid union-security clause to pay dues and initiation fees to the Union arising from his dispatch and employment by the Employer in the Unit from July 17, 2006. There is also no doubt that the Union on November 14, 2006, caused the discharge of Mr. Lopez from his employment with the Employer under a claim of Mr. Lopez' failure to fulfill his union-security obligations. The heart of the instant case, then, is whether or not the Union met its procedural obligations under the case law precedent to the Union seeking and causing Mr. Lopez discharge.

c. Resolution of conflicting evidence respecting what union communications Mr. Lopez received and where and when he paid his arrearages

The record evidence respecting what and when the Union communicated with Mr. Lopez respecting union-security obligations and where and when he paid his arrears is relatively short and may be briefly listed and the conflicts considered and resolved.

First, the Union provided all hiring hall registrants, including Mr. Lopez in June 2005 and in the spring 2006, with a written specification of the amount of its initiation fees and monthly dues: initiation fee payment after employment of \$300 and monthly dues of \$29 per month. The notices received also made it clear that arrearages of dues beyond 2 months may result in suspensions of membership, forfeiture of prior payments, and financial penalties.

The October 12, 2006 letter quoted supra was not sent to the Employer. Mr. Lopez denied he received it. The totality of the evidence respecting it being sent was the testimony by Mr. Ortiz and Ms. Martinez who testified that the letter was prepared, placed in a hand addressed and franked business envelope with the Union's return address on it, picked up by the USPS, and was not thereafter returned by the USPS to the Union's offices. Other letters to represented employees prepared and sent in October and December 2006, in the same manner by the Union, were received by those employees.

As the Respondent notes on brief, union notice to an employee in this context means actual notice. *Local 545, Operating Engineers (Joseph Saraceno & Sons, Inc.)*, 161 NLRB

1114, 1121 (1966). Where, as here, the purported receiver of a first class letter credibly denied its receipt and the only evidence offered in opposition is limited to the preparation of the letter, the placing of the letter in the envelope, the franking of the envelope, the fact that the letter was picked up by the USPS, and its subsequent nonreturn to the sender, proof of actual notice has not been sustained. I find on this record, including my conclusion that Mr. Lopez was honestly attempting to testify to his recollection of events, that the letter was never delivered. I also find Ms. Martinez and Mr. Ortiz honestly testified to their recollection of events. No witness in this proceeding, in my view, was prevaricating. But here the events in question offered by the two do not directly contradict Mr. Lopez' claim of never having received the letter at his home.

Mr. Ortiz testified that at about the time this letter was sent, "we," presumably meaning the Union without specific reference to a particular individual, told jobsite Steward Lucero "that we sent Mr. Lopez a letter and that Mr. Lucero needed to tell Mr. Lopez he needed to come in and pay dues". Since Mr. Lopez denied talking with Mr. Lucero and Mr. Lucero did not testify, there is no evidence that such a conversation took place. I specifically find that the implied Lopez-Lucero conversation did not occur.

The November 1, 2006 letter quoted, *supra*, was indisputably given by the Union to both the Employer and to Mr. Lopez on November 1, 2006. The letter by its terms and caption is directed to the Employer and indicates Mr. Lopez' dismissal is being sought for a failure to pay a union-security obligation of "\$415.00 (Initiation Fee, and Dues)." The only evidence of a conversation taking place at the time the letter was handed to Mr. Lopez was the testimony of Mr. Lopez that Steward Lucero told him he had to pay the money, i.e. the letter's recited \$415, and to call Ms. Martinez to make arrangements. I find the conversation took place as testified to by Mr. Lopez.

Mr. Ortiz testified to a telephonic conversation that same day, November 1, 2006, with Mr. Lopez, which conversation Mr. Lopez denies, in which Mr. Ortiz or perhaps Mr. Lucero—the testimony is not crystal clear—told Lopez: "He was there since July, he hasn't paid anything. We told him the best we could do is probably 150 this week, 150 next week. If not, I'll have to have you removed." Mr. Lopez denied this conversation ever took place. Since the November 1, 2006 letter seeks \$415, and since Mr. Lopez testified to conversations with Ms. Martinez, which she did not deny, respecting that larger amount, I find that the conversation between Mr. Ortiz and Mr. Lopez did not take place. While Mr. Ortiz seemed to me, throughout his testimony, to be trying to recall the events in question, it was clear to me his memory was not crystal clear,⁶ he had many conversations of this type with employees behind in their dues obligation during the course of his work. In the

context of these events and given his other testimony, his affidavit and the record as a whole, and despite the fact that I found him to be an honest witness, I find that he was simply mistaken as to the identity of the person with whom he spoke on that occasion.

As noted above, Mr. Lopez testified to telephone conversations with Ms. Martinez in which he initially told her on November 13, 2006, that he had a money order for \$200. Delivery of the money order was discussed. Subsequently, on the same day, Ms. Martinez told Mr. Lopez to pay the balance of \$215 by Thursday, November 16, 2006—2 days later. Since Ms. Martinez did not deny these conversations, which had been testified to Mr. Lopez before Ms. Martinez testified, I find that they occurred as testified to by Mr. Lopez.

Mr. Ortiz testified that on November 13, 2006, he directed Steward Lucero and General Foreman Espinoza to have Mr. Lopez "come in tonight," but since neither Mr. Lucero nor Mr. Espinoza testified and since Mr. Lopez testified that no such conversation with them occurred, there is no direct evidence such a conversation took place. I specifically find that the implied Lopez-Espinoza-Lucero conversation did not occur.

No other communications between agents of the Union and Mr. Lopez prior to his termination are evident on this record.

There is confusion and ambiguity in the record respecting when Mr. Lopez paid his arrearages. Mr. Lopez testified, as set forth in greater detail *supra*, that at the instruction of Ms. Martinez, he dropped his first payment, a \$200 money order, into the mail slot of the then closed Pueblo union office on the afternoon of November 13, 2006, and paid the remainder of his obligation—\$215—at the union office on November 15, 2006, within the time limits given him by Ms. Martinez.

This version of events is supported by the fact that Mr. Lopez had the stub of a \$200 money order purchased on November 10, 2006, and that the stub was marked with the unusual lettering he testified Ms. Martinez instructed him to put on the money order. It is also supported by the fact that Mr. Ortiz testified that he had conversations with Ms. Martinez respecting Mr. Lopez' delivery of funds to the Pueblo office. And, importantly, Ms. Martinez did not testify respecting the conversations and actions attributed to her by Mr. Lopez.

Mr. Ortiz testified that Mr. Lopez was to drop off funds on November 10 and 13, 2006, and that he did not do so at least before 8 p.m. on November 13, 2006, at which time Mr. Ortiz left the office. Mr. Ortiz further testified that, although he was not sure of the date and was in fact guessing, Mr. Lopez did not finally pay his arrearages until the week of November 27, 2006.

The testimony of Messrs. Ortiz and Lopez concerning whether or not a money order was dropped into the mail slot of the Union's Pueblo offices on November 13, 2006, are at essential variance. I have found each to have been an honest witness. How can this variance be reconciled? Initially there is the possibility that the money order was dropped into the mail slot by Mr. Lopez and somehow lost or misplaced, i.e. fell out of sight or simply was not discovered by Mr. Ortiz. It is possible that the money order was picked up by another or misdelivered by Mr. Lopez to the wrong building or office. This is all pure speculation. Mr. Lopez or Mr. Ortiz may simply be wrong. The matter may not be resolved with certainty on this record.

⁶ Mr. Ortiz in his testimony often conflated things he may have done or that other union agents may have done or should have done, sometimes using the generic plural "we" to identify the union actor in a particular event. This lack of clarity or precision undermined my confidence in his memory of the events. This was particularly true when it seemed Mr. Ortiz seemingly assumed that Mr. Lucero and Ms. Martinez said things to or respecting Mr. Lopez and the record contains no direct evidence that those things occurred.

Given all the above, and on the record as a whole, I find that the first, directly disputed November 13, 2006 \$200 money order payment and the second, indirectly disputed, November 15, 2006 \$215 payment to the Union were made as testified by Mr. Lopez. I do so for several reasons. The Union did not produce a computer print out history of Mr. Lopez' payments to the Union during the relevant period even though the Union did produce such computer generated payment histories for several other represented employees payment during the same period. And, more importantly, Ms. Martinez, who testified at the hearing, did not testify respecting her conversations with Mr. Lopez or her handling of payments from him. These omissions are important and justify an inference, which I draw, that had the business records of the Union been produced and/or had Ms. Martinez testified regarding her conversations with Mr. Lopez or her handling of payments from him, this evidence would have supported Mr. Lopez version of events.

d. Did the Union provide sufficient information to Mr. Lopez prior to seeking and obtaining his termination?

Considering the events and findings made above, it is clear that the Union at no relevant time after Mr. Lopez received the November 1, 2006 letter provided him an explanation of the amount set forth in the November 1, 2006 letter as due, i.e., "\$415 (Initiation Fee, and Dues)." The requirement of the cases cited, including *Coopers NIU (Blue Grass)*, 299 NLRB 720, 723 (1990):

Specifically, the Union has to give the employee, at minimum, reasonable notice of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount. . . .

I find therefore—and this is not dependent on resolution of conflicting evidence but rather turns on undisputed record evidence—that the Union did not meet the fiduciary requirement that it provide the necessary explanation of the means of calculation of Mr. Lopez arrearages beyond the naked sum set forth in the November 1, 2006 letter simply as owed. The earlier information provided in the materials given dues applicants and hiring hall registrants, quoted supra, citing the monthly amounts of dues and the amount of initiation fees is insufficient to satisfy this requirement.

The above cited cases, augmented by the General Counsel's additional cited authority: *Carpenters, Local 296 (Acrom Construction Service, Inc.)*, 305 NLRB 822 (1991), and *International Union of Operating Engineers Local 542C (Ransome Lift)*, 303 NLRB 1001 (1991), and others, also require that the represented employee be afforded by the Union a reasonable opportunity to pay his or her arrearages before discharge is sought or obtained.

The resolution of this portion of the government's case depends on resolution of the issues of what Mr. Lopez was told about his payment and when Mr. Lopez made his arrearages payments. These factual questions have been discussed in detail in the proceeding sections of this decision. I have found that Ms. Martinez orally told Mr. Lopez by November 13, 2006, that he had to pay \$200 that day and \$215 by November 15, 2006. I have found further that Mr. Lopez in fact did make

payments within Ms. Martinez' deadline. Therefore I further find that the Union did not afford Mr. Lopez a reasonable opportunity—which I measure on this record as at least the deadline Ms. Martinez set forth as described above—to pay his arrearages before the Union sought and obtained his discharge. It is not reasonable for the Union to set a schedule for an employee to make required payments and then cause the discharge of that individual when he has met or is on schedule to meet the payment timetable given him.

e. Was Mr. Lopez a recalcitrant employee?

Counsel for the Union argues on Br. at 4:

While Local 578 does not admit that it failed to meet the requirements contained in *Philadelphia Sheraton*, even if it had not met those requirements:

The protections provided in *Philadelphia Sheraton* were never intended to be so rigidly applied as to permit a recalcitrant employee to profit from his own dereliction in complying with his obligations through ignorance or inadvertence, but will do so only as a matter of conscious choice. *Produce Workers Local 630 (Ralph's Green Grocery)*, 209 NLRB 117, 124 (1974).

And counsel for the Union further quotes *Western Publishing Co.*, 263 NLRB 1110, 1113 (1982):

[W]hen it is shown that an employee willfully and deliberately sought to evade his union-security obligations, the Board will excuse a union's failure to fully comply with the notice requirements [footnotes omitted].

The Respondent argues that Mr. Lopez failed to pay his union-security obligations despite knowing they existed even before he was dispatched to the workplace. Thus, argues counsel for the Union, Mr. Lopez' charges and the complaint allegations based on them should be dismissed for that reason irrespective of the Union's conduct herein.

The General Counsel recognizes the Board's decisional underpinnings creating the Respondent's "free rider" affirmative defense to allegations of Union mishandling of a union security discharge, but argues that the facts of the instant case do not support its application herein. Counsel for the General Counsel notes the Board's admonition in *Grassetto USA Construction, Inc.*, 313 NLRB 674, 677 (1994):

The Board has held that negligence or inattention on the part of the employee will not relieve the union of its fiduciary obligation. The union must show that an employee willfully and deliberately attempted to avoid union-security obligations before the Board will excuse the union's failure to fully comply with the notice requirements.

The record, even if the details are contradictory and disputed as to time and the content of the conversations, is clear that when Mr. Lopez received the November 1, 2006 letter he was quickly in contact with the Union's agent to arrange payment. The Respondent argues that Mr. Lopez took no action to fulfill his obligations after his receipt of the October 12 letter. On this record however, I have ruled supra that I cannot find he in fact received the October 12 letter.

There was a dispute respecting whether or not Mr. Lopez spoke about paying his arrearages on November 1, to Mr. Ortiz or rather spoke a few days later to Ms. Martinez. I have found supra on this record that Mr. Lopez spoke only to Ms. Martinez and made payments as he was directed. I therefore specifically find Mr. Lopez may not be considered to have “willfully and deliberately attempted to avoid his union-security obligations.”

There was also a dispute respecting when Mr. Lopez made payments to the Union. I have found supra that Mr. Lopez dropped off an initial \$200 payment at the Union’s Pueblo, Colorado offices on Monday, November 13, 2006, and paid the remainder of his obligation—\$215—on Thursday, November 16, 2006. Ms. Martinez testified, but did not address his testimony in these regards. This being so, I find Mr. Lopez was not willfully or deliberately attempting to avoid his union-security obligations during the events in contest after he received his first communication from the Union concerning them on November 1, 2006.

Having found Mr. Lopez at relevant times was not a “free rider” who was deliberately attempting to avoid his union-security obligations, I reject the Union’s affirmative defense that Mr. Lopez claims to relief in consequence of his discharge must be rejected for that reason.

f. Summary and conclusions regarding the November 14, 2006 union request to discharge Mr. Lopez

I have found supra that the Union on November 14, 2006, attempted to cause and, in fact, caused the Employer to discharge Mr. Lopez for a failure to fulfill his union-security obligation and that the Union did so in a manner inconsistent with its fiduciary obligation to represented employees respecting union-security discharge issues. As discussed above, this conduct is a violation of Section 8(b)(1)(A) and (2) of the Act and I so find, sustaining the General Counsel’s complaint in this regard.

3. The 8(b)(1)(A) and (2) allegations respecting the November 1, 2006 letter

The General Counsel alleges in the complaint that the Union attempted to cause the Employer to discharge Mr. Lopez by providing the Employer with the November 1, 2006 letter quoted in its entirety, supra. Given the analysis and conclusion, supra, that the Union’s November 14, 2006 demand that the Employer discharge Mr. Lopez violated Section 8(b)(1)(A) and (2) of the Act and given the fact that the November 1, 2006 letter by its terms seeks the immediate discharge of Mr. Lopez, it would seem that the letter also violates the same provisions of the Act. However because of the unusual factual context of the letter, further consideration of the issue is warranted.

The record establishes that the Union as a common practice provided letters to the Employer of the type at issue here respecting union-security obligation arrearages of Unit employees. It seems that the Union did so not, in fact, to obtain the employees’ immediate discharge but rather sent the letter to both employee and Employer to stimulate—often successfully—represented employee to take immediate action to make necessary payments of union-security arrearages thus avoiding what the employee might reasonably fear was the Employer’s consideration of terminating the employee. The record sug-

gests the Union’s letters were not intended by the Union and, importantly, apparently not taken by the Employer to be a true immediate discharge request. Thus, when the Union actually sought Mr. Lopez’ termination some 2 weeks after the letter issued, an additional direct request from the Union to the Employer was made seeking the discharge. And the record contains several such letters sent to the Employer concerning other employees who were also in arrears and who, like Mr. Lopez, were not immediately fired. Rather in subsequent days these other employees paid down their obligations.

These circumstances being so, I find and conclude the Union was not, by delivering the letter to the Employer, attempting to cause the discharge of Mr. Lopez. Therefore I further find the General Counsel has not sustained his complaint allegation that this conduct violated Section 8(b)(2) of the Act. Therefore that portion of the complaint will be dismissed.

When Mr. Lopez got his copy of the letter on November 1, 2006, however, there is no evidence suggesting he did not believe that the Union was in fact seeking his discharge. It was quite reasonable for an employee receiving a copy of a letter sent by his collective-bargaining representative to his Employer unambiguously seeking his discharge for union-security arrearages to believe the letter was precisely what it appeared to be. Since the Union had no proper right to seek Mr. Lopez’ discharge on that date,⁷ the Union’s letters creation of apprehension on Mr. Lopez’ part that the Union was in fact doing so, violated Section 8(b)(1)(A) of the Act, which section of the Act, quoted supra, protects employees from union interference with their Section 7 rights. Thus, as to the General Counsel’s complaint allegation that the Union violated Section 8(b)(1)(A) of the Act by providing Mr. Lopez with the November 1, 2006 letter, I sustain that allegation of the complaint.

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

2. Shaw Stone and Webster Construction, Inc. is, and has been at all relevant times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Respondent represents the Employer’s employees in the following unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

All laborers, journeymen laborers and apprentice laborers working for the Employer at its construction project in Pueblo, Colorado.

4. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by seeking the discharge of represented employee Mr. Sebedeo Lopez for failure to tender to the Respondent Union dues or initiation fees, without providing to him the means of calculation of his arrearages including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount or adequately advising him of his obligations or providing a reasonable opportunity to pay his

⁷ At that time it had not provided Mr. Lopez with any amount of time at all to pay his arrearages: reasonable or not.

or her arrearages before his discharge is sought or obtained and violated Section 8(b)(1)(A) of the Act by giving Mr. Sebedeo Lopez a copy of a letter to the Employer seeking his discharge on November 1, 2006, and creating the impression on Mr. Lopez part that the Union was seeking his discharge at that time.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not otherwise violate the Act as alleged in the complaint and the complaint allegations not sustained shall be dismissed.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist there from and post remedial Board notices. The evidence reflects that following the Employer's discharge of Mr. Lopez at the Union's wrongful demand, he came in a few weeks time to be redispached by the Union to his former employment and was at the time of the hearing herein an employee of the Employer in the Unit and a member in good standing in the Union. This being so, the directed make whole order herein will not include elements relevant to obtaining his reinstatement.

Although I have found an independent violation of Section 8(b)(1)(A) of the Act in the Union's creating the impression in the mind of represented-employee Mr. Sebedeo Lopez that it was seeking his discharge in giving him a copy of a November 1, 2006 letter to the Employer, I find it is not necessary to provide a separate remedy for that violation of the Act as its remedy is subsumed in the remedy of the other violations directed herein.

The Union will be directed to make Mr. Lopez whole for any loss of earnings or other benefits arising out of his loss of employment, with interest. Included in that amount will be any costs associated with reobtaining his former position. Loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.⁸

The Respondent Union, Laborers International Union of North America, Local 578, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause the Employer to discharge or otherwise discriminate against Mr. Sebedeo Lopez or any other employee for failure to tender to the Respondent union dues or initiation fees, without providing the means of calculation of the employee's arrearages including a statement of the precise amount and months for which dues are owed and of

the method used to compute this amount or adequately advising the employee of his or her obligations or providing a reasonable opportunity to pay his or her arrearages before the employees' discharge is sought or obtained.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Employer and Mr. Sebedeo Lopez, in writing, that the Union withdraws and rescinds its request for his discharge, and that the Union has no objection to his continued employment without any loss of seniority and other rights and privileges previously enjoyed by him.

(b) Make Mr. Sebedeo Lopez whole, with interest, for any loss of earnings and other benefits and additional costs of obtaining reemployment he may have incurred as a result of the discrimination against them. Backpay shall be computed in the manner set forth in the remedy section of this decision.

(c) Post at its Pueblo and Colorado Springs facilities copies of the attached notice marked "Appendix." Copies of the notice on forms provided by the Regional Director of Region 27, shall be signed by the Union's authorized representative and posted by the Union immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 27 for posting by the Employer at its place of business in places where notices to employees are customarily posted, if the Employer is willing to do so.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

The allegations of the complaint not sustained herein shall be and they hereby are dismissed.

Dated, Washington, D.C. March 21, 2008

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.

Choose representatives to bargain on your behalf with your employer.

⁸ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

Act together with other employees for your benefit and protection.

Choose not to engage in any of these protected activities.

WE WILL NOT discriminate in regard to the tenure of employment of Mr. Sebedeo Lopez

WE WILL NOT cause or attempt to cause Shaw and Webster Construction, Inc, to discharge or otherwise discriminate against Mr. Sebedeo Lopez or any other employee for failure to timely tender initiation fees or periodic dues without providing such employee with the means of calculation of his or her arrearages including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount or adequately advising him or her of his or her obligations or providing a reasonable opportunity to pay his or her arrearages before his or her discharge is sought or obtained from the Employer.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce the employees and members we represent in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL advise the above-named Employer and Mr. Sebedeo Lopez, in writing, that we withdraw and rescind our request for his discharge, and that we have no objection to his continued employment without any loss of seniority and other rights and privileges previously enjoyed by them.

WE WILL make Mr. Sebedeo Lopez whole, with interest, for any loss of pay and benefits or costs of obtaining reemployment suffered because of the discrimination against them.

WE WILL NOT in any like or related manner violate the National Labor Relations Act.

LABORERS INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL UNION 578